

# Lies & Bullis

Attorneys at Law

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Steven J. Lies  
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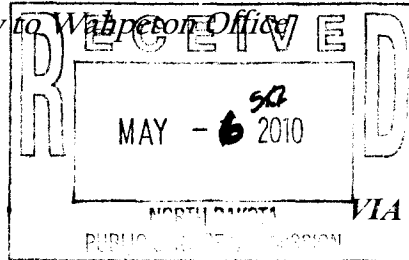
Hankinson Office:

327 Main Avenue South  
P.O. Box 325  
Hankinson, ND 58041-0325  
Telephone: (701) 242-7522  
Fax: (701) 242-7204

*Please Reply to Wahpeton Office*

May 6, 2010

Ms. Annette Bendish  
North Dakota Public Service Commission  
600 E Boulevard, Dept. 408  
Bismarck, ND 58505-0480



**RE: Public Service Commission vs. VeraSun Hankinson, LLC**  
**Case No. GE-09-104; Civil No. 39-9-C-462-1**

Dear Ms. Bendish:

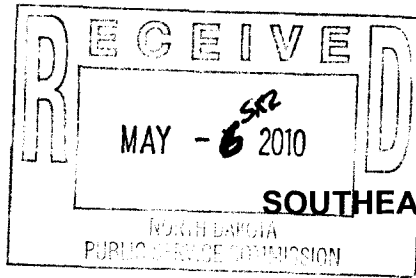
As per your request you will find enclosed an Affidavit executed by Keith Saunders and as prepared by your office. Please call with any questions.

Sincerely,

John Bullis

JB/amf  
Enclosure

STATE OF NORTH DAKOTA  
COUNTY OF RICHLAND



IN DISTRICT COURT  
SOUTHEAST JUDICIAL DISTRICT

\_\_\_\_\_)  
**Public Service Commission** )  
) )  
**Petitioner,** )  
) )  
**vs.** )  
) )  
**VeraSun Hankinson, LLC** )  
) )  
**Respondent.** )  
) )  
\_\_\_\_\_)  
**PSC Case No. GE-09-104** )  
\_\_\_\_\_)

**CIVIL NO. 39-9-C-462-1**

**SUPPLEMENTAL AFFIDAVIT  
OF KEITH SAUNDERS IN  
SUPPORT OF NONPAYMENT  
OF GRAIN CLAIM OF KEITH  
SAUNDERS**

STATE OF NORTH DAKOTA )  
 )ss  
COUNTY OF Richland )

Keith Saunders states under oath as follows:

1. I swear and affirm, upon penalty of perjury, that the statements made in this affidavit are true and correct.
2. On February 11, 2008, I signed Cash Contract Number 705011000004, agreeing to sell 10,000 bushels of corn, priced at \$3.72 per bushel for delivery to the ethanol facility in Hankinson, North Dakota, during the month of July 2008. On March 31, 2008, I signed both Cash Contract Number 705011000192, agreeing to sell 5,000 bushels of corn, priced at \$5.44 per bushel for delivery to the ethanol facility in Hankinson during the month of July 2008 and Cash Contract Number 705011000193, agreeing to sell 5,000 bushels of corn, priced at \$5.20 per bushel

for delivery to the ethanol facility in Hankinson during the month of October 2008. The payment terms agreed to in all three contracts were "Net 10" as provided in Exhibit KS-1 attached to Affidavit of Keith Saunders in Support of Nonpayment of Grain Claim of Keith Saunders executed March 11, 2010 and attached to this Affidavit.

3. Following delivery of the corn on these cash contracts, US Bio Hankinson, LLC issued checks within 10 days of delivery as provided in the payment terms of the contracts. I received US Bio Hankinson, LLC check number 6388 dated July 8, 2008, for the amount of \$42,888.57, check number 6436 dated July 15, 2008, for the amount of \$32,939.76, check number 6539 dated July 28, 2008, for the amount of \$15,106.02, check number 6923 dated September 20, 2008, for the amount of \$5,119.78, and check number 7086 dated October 13, 2008, for the amount of \$9,796.02. The checks were issued to me and Dacotah Bank.
4. I misplaced the checks. I had a file with the checks lying out on the kitchen table. I had to leave in a hurry so I put the checks back inside the file. I closed the file and put it away. We were busy with farm work and I forgot that I put the checks in the file. When I looked in the file in November, I found the checks. I recalled hearing that VeraSun had filed for bankruptcy, so I called my attorney immediately. My attorney told me to take the checks to the bank. I took the checks to the bank the next day.
5. I deposited check numbers 6436, 6539, 6923, and 7086 at Dacotah Bank. I was notified that all of the checks had been returned and were marked RETURN REASON (C), STOP PAYMENT. I assumed that check number 6388 would also

be returned for the same reason. I did not attempt to deposit it because of the bank service fees that I had already paid for the other four checks that were returned marked stop payment.

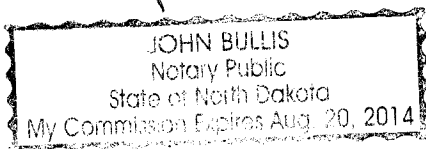
6. My usual practice is to deposit checks soon after I receive them and I have not held checks like this before. It was only because I had misplaced the checks that I did not deposit them earlier.
7. I am familiar with credit-sale contracts because I have entered into credit-sale contracts with my local cooperative elevator. Most of my crop is sold for cash. I sell only about 10-15% of my crop via a credit-sale arrangement. I like to keep credit-sales to a minimum because I'm a farmer and not a banker.
8. I never intended to extend credit to VeraSun for the sale of my corn. I did not execute any oral or written agreement to sell my corn under a credit-sale arrangement.
9. I did not file a claim in bankruptcy court.

Dated this 5 day of <sup>MAY</sup>~~April~~, 2010.

By: Keith Saunders  
Keith Saunders

Subscribed and sworn to before  
me this 5<sup>TH</sup> day of <sup>MAY</sup>~~April~~, 2010.

John Bullis  
Notary Public





US Bio Hankinson

**Cash Contract**  
**CONFIRMATION OF PURCHASE**

Contract No: 705011000004  
 Contract Date: 2/21/2007

Buyer: **US Bio Hankinson**  
 9230 County Road 1  
 Hankinson ND 58041

SAUKEI  
 Seller: **Saunders, Keith**  
 9406 147th Ave. SE  
 Geneseo ND 58053

QUANTITY:	10,000.00 BU	GRADE & COMMODITY:	U.S. #2 YELLOW CORN
BOARD PRICE:	\$0.0000	BOARD MONTH:	DO NOT USE JULY 2008
BASIS:	\$0.0000	DELIVERY PERIOD:	7/1/2008 TO: 7/31/2008
NET PRICE:	\$3.7200	FOB:	DELIVERED HANKINSON, ND

PAYMENT TERMS: Net 10  
 DISCOUNT SCALE:

WEIGHTS TO GOVERN: DESTINATION  
 GRADES TO GOVERN: DESTINATION

REMARKS: US BIO HANKINSON SCALE OF DISCOUNTS TO APPLY

**Terms and Conditions**

1. The retention of this contract without returning a signed copy or without immediately notifying seller of errors, herein, is acceptance of contract terms as stated by you.
2. This contract will be governed by the rules of the National Grain & Feed Association unless noted in the contract, and, to the extent not in conflict with the aforesaid rules, by the uniform commercial code.
3. As the Seller:
  - A. You agree that the commodities sold to seller shall be free and clear of all claims, liens, encumbrances and penalties. You represent that said commodity is now free and clear except as disclosed.
  - B. You agree that all commodities covered by this contract are not adulterated or miss-branded within the meaning of the Federal Food, Drug, and Cosmetic Act.
  - C. All excise or other tax hereafter levied which affects this contract, or any adjustments in freight rates prior to shipment will be for the sellers account.
4. As the Buyer:
  - A. You represent that you are not insolvent, as the Uniform Commercial Code defines that term. If your financial condition is found to be or becomes unsatisfactory to seller during the terms of this contract, seller shall have the right to withhold any shipments, you shall be responsible for any and all resulting costs, expenses, losses or damages incurred by the seller in the event you fail to make timely payment, and such action shall not release you from its obligation to accept and pay for such remaining product if and when shipped by seller.
  - B. A service charge of 1.5% per month, or the maximum rate permitted by law, if that is less, shall be added on past due accounts.
  - C. All excise or other tax hereafter levied which affects this contract, or any adjustments in freight rates prior to shipping here under will be at the expense of the buyer.
5. **Force Majeure:** In the event of war; insurrection; riot; fire; flood; or other unusual weather condition; explosion; Act of God; peril of the sea; strike; lockout or other industrial disturbance; sabotage; accident; embargo; breakage of machinery or apparatus; injunction; act of government authority; compliance with government order or national defense requirements; inability to obtain fuel, raw materials, labor, containers of transportation facilities or any other circumstance beyond the reasonable control of the parties; interferes with the production, shipment or consumption of product covered by this confirmation or with the supply of raw material used in connection there with the affected party may upon reasonable prompt notice to the other, suspend deliveries for the period during which such conditions prevail.

PLEASE SIGN DUPLICATE AND RETURN

ACCEPTED BY: Keith Saunders  
 Date: 2-11-08

US Bio Hankinson  
 BY: [Signature]  
 Date: 02/04/08



US Bio Hankinson

# Cash Contract

## CONFIRMATION OF PURCHASE

Contract No: 705011000192

Contract Date: 3/26/2008

Buyer: **US Bio Hankinson**  
9230 County Road 1  
Hankinson ND 58041

SAUKEI  
Seller: **Saunders, Keith**  
9406 147th Ave. SE  
Geneseo ND 58053

QUANTITY: 5,000.00 bu  
BOARD PRICE: \$0.0000  
BASIS: \$0.0000  
NET PRICE: \$5.4400

GRADE & COMMODITY: U.S. #2 YELLOW CORN  
BOARD MONTH: Corn - July 2008  
DELIVERY PERIOD: 7/1/2008 TO: 7/31/2008  
FOB: DELIVERED HANKINSON, ND

PAYMENT TERMS: Net 10  
DISCOUNT SCALE: STANDARD

WEIGHTS TO GOVERN: DESTINATION  
GRADES TO GOVERN: DESTINATION

REMARKS: US BIO HANKINSON SCALE OF DISCOUNTS TO APPLY

### Terms and Conditions

1. The retention of this contract without returning a signed copy or without immediately notifying seller of errors, herein, is acceptance of contract terms as stated by you.
2. This contract will be governed by the rules of the National Grain & Feed Association unless noted in the contract, and, to the extent not in conflict with the aforesaid rules, by the uniform commercial code.
3. As the Seller:
  - A. You agree that the commodities sold to seller shall be free and clear of all claims, liens, encumbrances and penalties. You represent that said commodity is now free and clear except as disclosed.
  - B. You agree that all commodities covered by this contract are not adulterated or miss-branded within the meaning of the Federal Food, Drug, and Cosmetic Act.
  - C. All excise or other tax hereafter levied which affects this contract, or any adjustments in freight rates prior to shipment will be for the sellers account.
4. As the Buyer:
  - A. You represent that you are not insolvent, as the Uniform Commercial Code defines that term. If your financial condition is found to be or becomes unsatisfactory to seller during the terms of this contract, seller shall have the right to withhold any shipments, you shall be responsible for any and all resulting costs, expenses, losses or damages incurred by the seller in the event you fail to make timely payment, and such action shall not release you from its obligation to accept and pay for such remaining product if and when shipped by seller.
  - B. A service charge of 1.5% per month, or the maximum rate permitted by law, if that is less, shall be added on past due accounts.
  - C. All excise or other tax hereafter levied which affects this contract, or any adjustments in freight rates prior to shipping here under will be at the expense of the buyer.
5. Force Majeure: In the event of war: insurrection: riot: fire: flood: or other unusual weather condition: explosion: Act of God: peril of the sea: strike: lockout or other industrial disturbance: sabotage: accident: embargo: breakage of machinery or apparatus: injunction: act of government authority: compliance with government order or national defense requirements: inability to obtain fuel, raw materials, labor, containers of transportation facilities or any other circumstance beyond the reasonable control of the parties: interferes with the production, shipment or consumption of product covered by this confirmation or with the supply of raw material used in connection there with the affected party may upon reasonable prompt notice to the other, suspend deliveries for the period during which such conditions prevail.

PLEASE SIGN DUPLICATE AND RETURN

US Bio Hankinson

ACCEPTED BY:

Keith Saunders

BY:

[Signature]

Date:

3-31-08

Date:

3/26/08



US Bio Hankinson

# Cash Contract

## CONFIRMATION OF PURCHASE

Contract No: 705011000193

Contract Date: 3/26/2008

Buyer: **US Bio Hankinson**  
9230 County Road 1  
Hankinson ND 58041

SAUKEI  
Seller: **Saunders, Keith**  
9406 147th Ave. SE  
Geneseo ND 58053

QUANTITY: 5,000.00 bu  
BOARD PRICE: \$0.0000  
BASIS: \$0.0000  
NET PRICE: \$5.2000

GRADE & COMMODITY: U.S. #2 YELLOW CORN  
BOARD MONTH: Corn - December 2008  
DELIVERY PERIOD: 10/1/2008 TO: 10/31/2008  
FOB: DELIVERED HANKINSON, ND

PAYMENT TERMS: Net 10

WEIGHTS TO GOVERN: DESTINATION

DISCOUNT SCALE: STANDARD

GRADES TO GOVERN: DESTINATION

REMARKS: US BIO HANKINSON SCALE OF DISCOUNTS TO APPLY

### Terms and Conditions

1. The retention of this contract without returning a signed copy or without immediately notifying seller of errors, herein, is acceptance of contract terms as stated by you.
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3. **As the Seller:**
  - A. You agree that the commodities sold to seller shall be free and clear of all claims, liens, encumbrances and penalties. You represent that said commodity is now free and clear except as disclosed.
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  - C. All excise or other tax hereafter levied which affects this contract, or any adjustments in freight rates prior to shipment will be for the sellers account.
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  - B. A service charge of 1.5% per month, or the maximum rate permitted by law, if that is less, shall be added on past due accounts.
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PLEASE SIGN DUPLICATE AND RETURN

US Bio Hankinson

ACCEPTED BY:

*Keith Saunders*

BY:

*[Signature]*

Date:

3-31-08

Date:

3/26/08